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TO THE
HOUSE COMMITTEE ON HEALTH

THE TWENTY-EIGHTH STATE LEGISLATURE
REGULAR SESSION OF 2015

March 27, 2015
9:15 a.m.

TESTIMONY ON H.C.R. NO. 136

REQUESTING THE HAWAII BANKERS ASSOCIATION
TO OPINE WHETHER MEMBER FINANCIAL INSTITUTIONS
AND THEIR STAFF WHO CHOOSE TO SERVICE
MEDICAL MARIJUANA-RELATED BUSINESSES
RISK CIVIL AND CRIMINAL PROSECUTION UNDER FEDERAL LAW

THE HONORABLE DELLA AU BELATTI, CHAIR,
AND MEMBERS OF THE COMMITTEE:

My name is Iris Ikeda, Commissioner of Financial Institutions ("Commissioner"),
offering comments on behalf of the Department of and Consumer Affairs
("Department"), on House Concurrent Resolution No. 136.

H.C.R. 136 requests that the Hawaii Bankers Association: 1) opine whether
member financial institutions and their staff who choose to service medical marijuana-

related businesses risk civil and criminal prosecution under federal law; and 2) submit a report to prior to the convening of the 2016 Legislature.

State law does not prohibit banks from opening accounts for medical marijuana-related businesses (“businesses”). What is needed is a signal from federal bank regulators that they will not shut down a financial institution for doing business with legitimate medical marijuana businesses.

Should the State establish a system for dispensing medical marijuana locally, there are potential advantages to allowing medical marijuana-related businesses to opening bank accounts, including:

1. A bank account would likely help reduce crimes against property and persons engaged in these types of business by reducing the need to store and handle large amounts of cash without the security offered by bank accounts/deposits;
2. Businesses can make payments by check to utilities, taxation authorities, and employees;¹
3. Businesses can operate their business like other retail establishments that use banks; and
4. Business customers can use credit cards or other non-cash methods to purchase medical marijuana through a state-sanctioned dispensary system.

The concerns arising from medical marijuana-related businesses bank accounts include:

¹ States reported that prior to banks accepting marijuana businesses as customers, the businesses would overpay the state tax department and wait for a reimbursement.

1. Issues related to mandatory bank compliance with Bank Secrecy Act/Anti-Money Laundering regulations. This involves:
 - a. Enhanced due diligence standards;
 - b. Filing suspicious activity reports;
 - c. Filing currency transaction reports (with limited exemptions); and
 - d. Continuous monitoring of accounts and related accounts;
2. Bank exposure to reputation loss, should state or federal regulators issue an enforcement order against the bank for violation of law;
3. The impact on the bank's state or federal charter, as its relationship with a marijuana business may be found to be in violation of law; and
4. The bank's board of directors' exposure to claims that the board authorized the bank to open these accounts, without proper oversight.

Should the Legislature decide to establish a local medical marijuana dispensary system, the issues raised above should be considered to gain a full understanding of the potential impact on Hawaii's financial institutions.

Thank you for the opportunity to provide comments. I would be pleased to respond to any questions you may have.



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Presentation To
House Committee on Health
March 27, 2015 at 9:15 am
State Capitol Conference Room 329

Testimony in Opposition to House Concurrent Resolution 136

TO: The Honorable Della Au Belatti, Chair
The Honorable Richard P. Creagan, Vice Chair
Members of the Committee

My name is Edward Pei and I am the Executive Director of the Hawaii Bankers Association (HBA). HBA is the trade association representing eleven FDIC insured depository institutions with branch offices in the State of Hawaii.

The legalization of medical marijuana in 24 states and more recently the legalization of marijuana for recreational use in four states and the District of Columbia have posed complex issues for the banking industry. Even with state action to legalize the use of marijuana, the plain fact is that marijuana, its use, cultivation, transport, sale, possession, and all related activities, remain unequivocally illegal under federal law. Any state action does nothing to change that and it does not appear that Congress has any desire or willingness to legalize marijuana at a federal level. As long as it is considered an illegal substance by federal law, banks across the country have serious risks and challenges if they desire to provide banking services to any businesses involved with marijuana in any form. That includes obviously businesses growing or selling marijuana but also landlords or vendors assisting or serving these businesses.

There are several federal statutes, dating back to 1970, that affect a bank's ability to serve clients involved with marijuana. Several of those statutes are identified in this resolution, including the Controlled Substances Act, The Bank Secrecy Act, the Patriot Act, and the Comprehensive Drug Abuse Prevention and Control Act. As more states have legalized marijuana use in some form, there have been some attempts to reconcile federal and state marijuana laws. The Department of Justice, as well as the Department of Treasury's Financial Crimes Enforcement Network (FinCEN) have issued some guidance for banks interested in serving marijuana businesses. However, as well intended as these guidances may have been, they have been inadequate in providing assurances to banks that they will not face civil or criminal penalties, and even the possibility of losing their banking charters, should they provide financial services to marijuana related businesses.

In addition to the legal and regulatory risks, banks also face many other significant risks when considering relationships with marijuana businesses. There is reputation risk, as other bank customers and the community at large may look unkindly at a bank facilitating the distribution of an illegal substance. There are operational risks, as compliance with FinCEN requirements are significant. Not only are there requirements for extensive due diligence efforts before dealing with a marijuana business but there are other significant operational challenges on an ongoing basis. Banks must also be cautious in assessing relationships with other clients that might be peripherally related to marijuana businesses, such as landlords and vendors. And there are lending risks as well, since lending on illegal collateral is prohibited. This includes lending on marijuana related real estate.

With such uncertainty and risks associated with providing financial services to marijuana related businesses, the Hawaii Bankers Association, representing the Hawaii banking industry, is ill equipped at this time to advise this body whether its member banks will serve these businesses. Further, the intent of this resolution is somewhat unclear. If the resolution is seeking an opinion whether banks risk civil and criminal prosecution, the federal statutes are clear that such risks exist. Therefore, we oppose this resolution as presented. Perhaps the resolution instead should be directed to Congress to ask that they act to reconcile the conflicts between Federal and State laws on this complex issue.

Thank you for the opportunity to submit this testimony and please let us know if we can provide further information.

A handwritten signature in dark ink, appearing to read 'Edward Y. W. Pei', with a stylized flourish at the end.

Edward Y. W. Pei
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